



September 9, 2002

Mr. Gary A. Scott
Assistant City Attorney
City of Conroe
P.O. Box 3066
Conroe, Texas 77305

OR2002-5027

Dear Mr. Scott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168261.

The City of Conroe (the "city") received a request for "any criminal information" that the city may have regarding a named individual. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by the common law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). Common law privacy protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Id.* Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Thus, when complying with a request from a member of the general public would require a governmental body to compile an individual's criminal history, the governmental body must, pursuant to section 552.101 and the common-law-privacy concerns expressed in *Reporters Committee*, withhold any records in which the named individual is portrayed as a suspect, defendant, or arrestee. However, because information is excepted in such circumstances in order to protect the privacy interest of the named individual, that person or his authorized representative has a special right of access, beyond the general public, to such information. *See Gov't Code* § 552.023.

In this instance, the requestor asks the city to compile the criminal history of a named individual. Although this request implicates the named individual's right of privacy, the requestor has provided a release form, which you state the named individual "has presumptively signed and dated." You ask whether this release form grants the requestor a special right of access under section 552.023 to the requested information.

The requirements of a valid consent are prescribed by section 552.229 of the Government Code. Section 552.229(a) provides that a person may "[c]onsent [to] the release of information excepted from disclosure to the general public but available to a specific person under Sections 552.023 and 552.307[; such] consent must be in writing and signed by the specific person or the person's authorized representative." A person who is under the age of eighteen may only consent with the additional written authorization of the person's parent or guardian. Gov't Code § 552.229(b). If the individual in question has been adjudicated incompetent or has had an attorney ad litem appointed, consent may only be given by the person's designated legal guardian or attorney ad litem. *Id.* § 552.229(c).

Whether a particular consent form meets the requirements of section 552.229 is a factual determination. This office does not make factual determinations in the opinion process. Attorney General Opinion JC-0534 at 1 (2002). Accordingly, if the city determines that the release form supplied by the requestor does not meet the requirements of section 552.229, the city must withhold records in which the named individual is portrayed as a suspect, defendant, or arrestee, to the extent such records exist. If, however, the city determines that the release form complies with the requirements of section 552.229, the city must provide such records to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

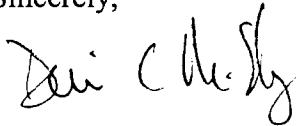
2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/seg

Ref: ID# 168261

Enc. Submitted documents

c: Ms. Sonya P. Miller
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(w/o enclosures)